

# **The Office of Guardian ad Litem**

# THE OFFICE OF GUARDIAN AD LITEM

Created in 1994 as part of the reform of Utah's child welfare system.

## Function

The GAL Office provides specially trained attorneys to represent the best interests and communicate the wishes of children and youth who are abused, neglected, or dependant.

A GAL attorney is appointed to represent each child who is the subject of a petition in the juvenile court alleging abuse or neglect of a child. Some of these children are in foster care, but most are safe to remain in their homes while their families engage in services designed to ameliorate the issues that gave rise to state intervention. Juvenile court cases make up about three-fourths of the total caseload in the GAL Office.

In district court a GAL may be appointed by a judge in cases where there are allegations of abuse or neglect of a child. Most of these are divorce, custody and protective order proceedings.

## Necessity

When the State intervenes in a family, there is no one with more at stake than the child.

*"When a court presumes to consider the best interests of a child, . . . it is critically important for [the child] to have personal representation by counsel who has no other agenda than to determine what actually is in the best interest of that child."*<sup>1</sup>

DCFS and the parents are the primary adversaries in a child welfare case in which parents are alleged to have abused or neglected their child. The Child Protection Division of the Attorney General's Office represents DCFS. Private attorneys or attorneys on contract with a county represent the parents. Neither DCFS's nor the parents' attorney can ethically also represent the child. For example, the lawyer for the parents cannot guard the child's interests because the parents' lawyer is advocating for the parents. If the child's interests are at odds with the wishes of the parents, the parents' lawyer is duty-bound to advocate the parents' wishes. Nor is the lawyer for DCFS in a position to represent the child. Although DCFS usually seeks the outcome that is best for the child, that is not always the case. For example, suppose a psychologically traumatized child needs expensive in-patient treatment. Cash-strapped

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<sup>1</sup> J.W.F. v. Schoolcraft, 763 P.2d 1217, 1220 (Utah Ct. App. 1988)

DCFS may instruct its attorney to ask the judge for less expensive out-patient treatment, and the attorney is obligated to go along.

- The Federal Child Abuse Prevention and Treatment Act of 1974 (CAPTA) provides that a guardian ad litem must be appointed to represent the best interests of a child when judicial proceedings are necessary.
- In 2008 the ABA Center on Children and the Law reported on a study which concluded that children who are represented by an attorney are significantly more likely to achieve permanency.

If the parents and DCFS need attorneys to properly represent their views in court, why does the child whose entire future is at stake need something less?

The National Center for Youth Law has stated:

*"[O]ne of the reasons the David C. v. Huntsman case settled in 1994 and has now ended (pending confirmation of sustainability in 2008) is the creation of a strong, independent Guardian ad Litem office. Plaintiffs' counsel view your office as a critical force in reforming Utah's child welfare system."<sup>2</sup>*

### **Responsibilities**

Sections 78A-6-901 and 902 of the Utah Code provide the statutory framework for the work performed by the GAL Office. In particular, section 902(3) sets out these duties:

- Represent the best interests of clients in all proceedings
- Conduct an ongoing, independent investigation
- Meet with clients
- Interview clients (when appropriate)
- Determine the client's goals and concerns regarding placements
- Assess appropriateness and safety of placement environment
- Attend all review hearings
- Participate in all appeals
- Be familiar with local experts
- Advise clients of case status, proceedings, treatment services, etc.
- Monitor implementation of the child and family plan

The comprehensive treatise *Child Welfare Law and Practice* (2<sup>nd</sup> Ed.), known as "the Red Book", published by the National Association of Counsel for Children, has been adopted by the GAL Office as the basic training curriculum and authoritative guide for the work performed by GAL attorneys. In addition the Office has adopted Best Practice Guidelines to offer further, state-specific direction to GAL attorneys.

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<sup>2</sup> August 20, 2007 letter from NCYL, attached in the Appendix to this section.

## **Investigation**

One of the statutory responsibilities of a GAL is to conduct an ongoing investigation. Portions of any given case investigation may be carried out by the GAL; support staff (legal secretary, administrative assistant, etc.); GAL program assistant (background checks); and a CASA volunteer. Each investigation is as unique as the case itself, but frequent components include:

Information from parents	Police report
BCI background checks	DCFS database historical information
School/teacher information	24 hr. multi-disciplinary meeting
CJC interview recording	Input from therapists & treatment providers
Medical records	Reports from probation
Home/placement visits	Client interviews
Discovery requests	Collateral contacts (family, friends, etc.)

The following is taken from the Office of Guardian ad Litem's Best Practice Guidelines:

### **C. Independent Investigation to Determine Best Interests**

1. Conduct or supervise an independent ongoing investigation in regard to the child in order to obtain a first-hand, clear understanding of the situation and needs of the minor.
2. Seek to obtain, whether informally or by use of discovery or motion practice, all relevant evidence and useful collateral information, such as: child interviews, DCFS records, parent interviews or statements, experts and professionals, witnesses, service providers, evaluations, assessments, medical records, school records, police reports and criminal records, counseling and substance abuse records, CASA-collected information, court records, etc.
3. Personally meet with the minor, personally interview the minor if the minor is old enough or able to communicate, determine the minor's goals and concerns regarding placement, and personally assess or supervise an assessment of the appropriateness and safety of the child's environment of each out-of-home placement or custody arrangement.
4. When reasonably necessary, confirm or verify the accuracy of collateral information. Seek to obtain original source documents and/or information from original source contacts.
5. Be open to new and relevant information which may assist in the determination of best interests of the child. Seek out relevant information from collateral sources.
6. Be open and objective when gathering relevant and pertinent information until such time as it is necessary to make a determination of best interests at each stage of an open case. Employ a willingness to change your mind about best interests if new information suggests a need to do so for the benefit of the child client.
7. The GAL should have "no other agenda than to determine what actually is in the best interests of the child" and "shall investigate the case, especially as it affects the interests of the child, and present to the court an independent determination of what court action would be in the best interests of the child." *Schoolcraft*, at 1220.

## **Progress**

The 2008 Legislative Performance Audit of the GAL Office concluded: *"We believe the Guardian ad Litem (GAL) program has improved significantly since our 2005 audit. A major reason the program is performing better is that the Legislature increased funding so that more staff could be hired."*

Between June, 2007, and the present, the following significant events have taken place to move the GAL office forward:

- Vision, Mission and Duty statements adopted
- New management structure
- Management job descriptions developed
- Training for administrators/managers implemented
- Uniform file management and archiving system developed and implemented
- Office policies adopted
- Began using nationally recognized standards for children's counsel
- Developed best practice guidelines
- Created electronic resource manuals
- Revised and streamlined office procedures for greater efficiency
- Introduced teaming for improved office functioning
- Enhanced GAL training program<sup>3</sup>
- Instituted Child Welfare Law Specialist certification program (29 attorneys certified thus far)
- Changed office waiting areas to child-friendly, conducive to good interviews
- Launched initiatives to increase professionalism and level of service provided
- Began training CASA volunteers as education advocates
- Doubled the size of the CASA program (with no new state funding)
- Created a comprehensive automated case management system, which includes management, administrative, and performance reporting capability

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<sup>3</sup> See the list of specialized training topics taken from the "Red Book", attached in the Appendix to this section.

# Appendix



## National Center for Youth Law

**Director**

John F. O'Toole

**Deputy Director**

Patrick Gardner

**Senior Attorneys**

Pat Arthur

Admitted only in NY & WA

William L. Grimm

Admitted only in MD

Rebecca Gudeman

Leecia Welch

**Attorney**

Molly Dunn

**Of Counsel**

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**Skadden Fellow**

Martyna

**Equal Justice Works Fellow**

Laura Townsend

Admitted only in DC

Fiza Quraishi

**Director of Development**

Dan De Vries

**Director of Communications**

Tracy Schroth

**Administrator**

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**Assistant to the Director**

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**Administrative Staff**

Ethel L. Oden-Brown

Dainellee D. Stoll

August 20, 2007

F. Richards Smith

Director, Office of the Guardian ad Litem

Administrative Office of the Courts

450 South State Street, N31

Salt Lake City, UT 84114

Dear Mr. Smith:

It was a pleasure to meet with you last month and to discuss the important role the Office of the Guardian ad Litem plays in ensuring positive outcomes for Utah's children and families. As you know, one of the reasons the *David C. v. Huntsman* case settled in 1994 and has now ended (pending confirmation of sustainability in 2008) is the creation of a strong, independent Guardian Ad Litem office. Plaintiffs' counsel view your office as a critical force in reforming Utah's child welfare system, and we are confident that under your leadership, that will continue to be the case.

Prior to the 1994 Settlement Agreement in *David C.*, the state had a guardian ad litem program that was underfunded and failed to provide adequate representation to the foster children in the care of DCFS. The GAL program received little attention or oversight, and many children, including the 16 named plaintiffs in the case, had never seen, met, or even spoken with their attorneys. All of this changed in 1994 with the establishment of the Office of the Guardian Ad Litem. The Office of the Guardian Ad Litem dramatically improved the representation of children and implemented a systematic means for training, supporting, and supervising GALs. These improvements have resulted in dramatically better outcomes for children and families.

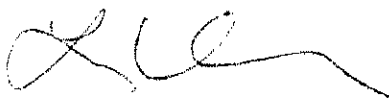
When the Milestone Plan was developed in 1999, it specifically acknowledged that improvements in the state's GAL program were an important part of the state's child welfare reform efforts. *See* Performance Milestone Plan at 34. The Milestone Plan recognized the importance of fully investing in the infrastructure that enables the child welfare system to function properly, including the GAL's office.

The quality of advocacy on a daily basis by guardians ad litem will determine, in large part, whether the reforms achieved through the *David C.* case are sustained. The GALs serve not only as independent advocates for children, but also as an external check on DCFS to ensure that court-ordered services are being made available to both the child and the family. Further, the GALs may frequently be the first to recognize that services for reunifying a family are inadequate and propose changes that serve to expedite the child's reunification with their family. In these and many other ways, the GALs play an important "watchdog" role and are critical to ensuring the future success of the child welfare system now that active court oversight has concluded.

Given this role, it is crucial that the GAL office remain independent of the executive branch. While it is important for GALs to work effectively with case workers and other members of the child and family team, their role in advocating for the needs of the child, as mandated by the Child Abuse Prevention and Treatment Act, is unique and separate from the work of DCFS. Problematic conflicts of interest could arise if GALs and case workers, who are represented by the Attorney General's Office in child welfare proceedings, were both housed under the Department of Human Services. Furthermore, changes in the administrative structure and placement of the GAL office would require significant resources that are better spent on children and families, and could potentially result in litigation over perceived or actual conflicts of interest.

As you know, we have been concerned that heavy case loads and lack of adequate resources could impede your office's ability to represent youth effectively, as they have in the past. These concerns were reinforced by our review of the findings in the Legislative Audit of your office in 2005, which noted that case loads appear to have been increasing significantly while the number of GALs has not increased to accommodate the rising case loads. *See* Performance Audit of the Office of the Guardian ad Litem at 28. We are hopeful that the State of Utah recognizes the crucial role the GALs play in maintaining a well-functioning child welfare system, and the wisdom of investing in your office and ensuring its vibrancy.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Leecia Welch', with a long, sweeping horizontal line extending to the right.

Leecia Welch  
Senior Attorney



# **SPECIALIZED GAL TRAINING TOPICS**

## **NACC Guidelines**

### General

- Mental Health (diagnoses, treatment, etc.)
- Child Development
- Impact of Maltreatment (short- and long-term)
- Family Dynamics
- Child Safety (including safety decision making)
- Physical, Sexual, and Emotional Child Abuse and Neglect
- History of Child Welfare
- Child Welfare Casework
- Education Issues for Children in Foster Care
- Transitioning from Foster Care to Independent Living
- Maintaining Important Affiliations
- Sibling Association
- Cultural Context

### Legal

- Forensic Interviewing
- Legal Interviewing and Counseling of Child Clients
- Federal Child Welfare Legislation
- US Supreme Court Case Law regarding Child Welfare
- Indian Child Welfare Act
- Due Process and Child Protection
- Interstate and International Issues (UCCJEA; Hague Convention; etc.)
- Confidentiality
- Collateral Proceedings
- Immigration Issues
- Non-adversarial Case Resolution
- Child Welfare Timelines (State statutory framework)
- Establishing Legal Permanency
- Special Ethical Considerations re: Clients with Diminished Capacity
- Determining Decision-making Capacity
- Determining Best Interests

## SECTION 2

# **Critical Funding Issues**

# **CRITICAL FUNDING ISSUES**

The Office of Guardian ad Litem has faced three critical funding issues for several years. The legislature began to address these issues in 2007, but the economy has prevented further action. Each of the three issues is summarized here.

## **Attorney Salary Parity**

A comparison between the salaries of GAL attorneys and other attorneys in State government (this is not a comparison with the private sector) shows that GAL attorneys are paid an average of 34% less.

- This salary disparity results in an average annual turnover rate as high as 25%
- Last year's turnover rate was 21% At the mid-point in FY 12 the rate is already 16%
- Nearly all GAL's report low compensation as a primary factor in their decision to leave.
- Since 2001, 53% of the attorneys who have left the GAL Office took positions still in the public sector. Eight GAL's were hired by the Attorney General's Office to continue working in child protection.

The lack of salary parity is demoralizing, drains the GAL Office of experience, creates burdensome training demands, and impacts the quality of legal representation provided.

## **Support Staff**

The GAL Office employs about one support staff for every 2 lawyers. By contrast, in the Child Protection Division of the Attorney General's Office the ratio is about one support staff per lawyer.

Utah Code section 78A-6-901(3)(k) provides that the GAL Director shall "hire, train, and supervise investigators." While this provision has existed since the creation of the GAL Office in 1994, funding to hire investigators was provided for the first time in 2001. Statewide budget cuts later that year eliminated the funding, and it has never been replaced.

## **Case Loads**

The U.S. Department of Health and Human Services, and the National Association of Counsel for Children, have each determined that attorneys representing children in child welfare cases should represent a maximum of 100 child-clients at a time, presuming

adequate support staff levels. The average caseload in the Utah GAL Office is around 200; double the national standard.

- Since 1995 the number of GAL attorneys has increased by 54%
- In the same time period, the number of children represented by the GAL Office has increased by **258%**
- **Growth in children served has outpaced growth in the attorney workforce by nearly 5 times.**

The current caseload average is a significant improvement over the past. The 2005 GAL legislative performance audit found that average caseloads were at 319 child-clients. A legislative appropriation in FY 08 provided funding for additional GAL attorneys, resulting in the lower caseload average.

### **Prioritization**

The GAL Office and Oversight Committee have studied the funding issues, and with input from the Executive Offices and Criminal Justice Appropriations Subcommittee (EOCJ) have prioritized the funding needs. **The primary focus of prioritization has been the quality of legal representation provided to child victims of abuse and neglect.**

*"Primary causes of inadequate legal representation of the parties in child welfare cases are **low compensation** and excessive caseloads. Reasonable compensation of attorneys for this important work is essential . . . The need for improved compensation is not for the purpose of benefitting the attorney, but rather to ensure that the child receives the intense and expert legal services required."<sup>1</sup>*

- Qualified and experienced attorneys are the front lines in providing legal representation to abused and neglected children. Nothing is more important to the work of the GAL Office than recruiting and retaining the best lawyers.
- The 2008 GAL legislative performance audit recommends examination of support staff levels as a means of easing the burden on attorneys who must perform many non-attorney functions. Those functions could be performed in a more cost-efficient manner by appropriate support staff.
- With no additional state appropriation, the Office has been able to nearly double the size of its CASA volunteer program as a means of increasing the support, particularly the investigative support, available to GAL attorneys.
- EOCJ has suggested that hiring additional staff be prioritized over hiring additional attorneys as more cost-effective.

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<sup>1</sup> Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State legislation Governing Permanence for Children, U.S. Dep't of HHS ACF ACYF Children's Bureau (1999), p. VIII-4. (Emphasis added.)

*"For the sake of the child client and the interests of the system, attorneys must be provided appropriate and reasonable compensation."<sup>2</sup>*

After careful consideration of these and other factors, the prioritization adopted by the GAL Oversight Committee is as follows:

1. Achieve attorney salary parity
2. Increase support staff levels, including hiring investigators
3. Reduce case loads by increasing the number of attorneys

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<sup>2</sup> *National Association of Counsel for Children Recommendations for Representation of Children in Abuse and Neglect Cases, III.A.2, Comment B (2001).*

## SECTION 3

# Options

## OPTIONS

The funding needs within the GAL Office have been identified for several years, and the Legislature has taken steps to begin addressing them. In addition, the GAL Office has undertaken a number of initiatives directed at increasing productivity and capacity, without incurring additional expense. A few of those accomplishments are highlighted below. Also listed below are some possible options for ongoing consideration, including a GAL Oversight Committee study item.

### Accomplishments

- Restructured Office management to provide better supervision and increased training.
- Examined, redesigned and streamlined processes and procedures, resulting in improved workflow and increased output.
- Nearly doubled the size of the CASA volunteer program.
- Enhanced GAL training including adopting a national curriculum and participating in the ABA sanctioned Child Welfare Law Specialist certification program.
- Increased use of technology and portable resources (such as electronic resource manuals).
- Created a comprehensive automated case management system which interfaces with the database systems in DCFS and the district and juvenile courts.

### Some Options for Consideration

- Achieve full salary parity: \$1,255,800.
- Achieve parity incrementally over a period of years (for example, \$418,600 each year for 3 consecutive years).
- Increase support staff up to an appropriate level (including investigators and legal secretaries): \$998,200.
- Increase support staff incrementally over a period of years.
- Continue to increase the capacity of the CASA program, and use highly trained volunteers as much as possible to perform investigatory functions.
- The GAL Oversight Committee, with support from the EOCJ Appropriations Subcommittee, recommends addressing salary parity and support staff levels before addressing case loads. This approach will enable GAL attorneys to provide better legal representation to children, but requires less initial funding.
- To bring current case loads down to the national standard would require 31 additional attorneys, plus support staff: \$4,438,000.
- The GAL Oversight Committee is beginning a study to examine options regarding the district court case load. It is hoped that viable options to reduce this caseload can be identified. Results will be presented to the CW Leg. Oversight Panel.
- The California Plan. In California the need to reduce GAL case loads was addressed. To get case loads down to national standards would have cost some \$56 million. A less expensive plan was developed, which included setting a case load cap of 188 child clients per attorney with the requirement of hiring one investigator for every two attorneys. The study which developed this plan noted that it would achieve only a minimal standard of representation for children.